Supreme Court, U.S.
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No. 97-808

In The

Supreme Court of the United States

October Term, 1997

PATRICIA FULTON, Personal Representative of the Estate of JUDITH LUCAS, and GROVER LUCAS,

Petitioners,

vs.

RICKY SANDERS, KENNETH HARDIN and PAUL ISAACS,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDING

The petition accurately lists the parties to the proceedings.

STATEMENT OF THE CASE

The petition in this case seeks review of a Sixth Circuit Court of Appeals order affirming the district courts dismissal of a civil rights action premised on the Fourth and Fourteenth Amendments of the United States Constitution.

As set forth below, there is no cause for this Court's review. The detailed opinion of the District Court (Appendix B of Petition), follows the precedents of this Court, provides no basis of conflict with other circuits, and establishes no basis in fact for an extension or further interpretation of existing law.

A. The petition misrepresents the underlying facts of the case before the District Court, and in turn flaws the questions presented for review.

On June 21, 1995 at approximately 3:55 p.m., Kentucky State Police Trooper Ricky Sanders was checking traffic on old 31 W, north of Bowling Green, Kentucky in response to complaints of speeding and reckless operation on the two lane roadway.

Trooper Sanders had just issued a citation to a motorist he had stopped when Plaintiff Grover Lucas drove by at a high rate of speed. Trooper Sanders pursued the Lucas vehicle for 5.1 miles and stopped the vehicle at 3:59 p.m. During the five (5) mile pursuit the Lucas vehicle almost hit several vehicles and a motorcycle head-on while driving at a high rate of speed. Mr. Lucas got out of his vehicle after being stopped and informed Trooper Sanders that he was enroute to his wife's physicians office. Trooper Sanders did not know the Lucas', and had no basis to know if what he was being told as an excuse for the reckless operation was true or false. After chastising Mr. Lucas for his reckless operation, and without issuing any citations, Trooper Sanders released Mr. Lucas at 4:02 p.m., and followed the vehicle the remaining 5.2 miles to the physicians office to ensure safe arrival. Trooper Sanders had only a brief conversation with Plaintiffs' decedent when she informed him she was not feeling well, he check her pulse, and offered to summon an ambulance six (6) times. On some subsequent date

Trooper Sanders learned that Plaintiffs' decedent Judith Carole Lucas expired the following day, June 22, 1996 at 2:02 p.m..

On January 16, 1995 Plaintiffs filed action 1:96-CV-7-M in United States District Court for the Western District of Kentucky at Bowling Green. On August 9, 1996 an amended complaint was filed, removing Retired Commissioner Gene Peters as a defendant, and including Retired Commissioner Paul Isaacs as a defendant. Commissioner Isaacs was never served. On August 9, 1996 Memorandum Opinion and Order was entered dismissing the complaint. On August 13, 1997 order of the Sixth Circuit Court of Appeals issued affirming the opinion of the district court. Petitioners have since filed a civil action premised on the same operative facts in the Warren County, Kentucky circuit court.

Petitioners characterization of Trooper Ricky Sanders as some form a demon beginning at page 3 of the petition is totally without merit. As petitioners are well aware Trooper Sanders is a well respected member of the community and a dedicated officer. The remarks to the contrary are considered as intemperate and unprofessional and should be stricken.

A proper formulation of the issues must under these facts relate to the traffic stop, and any duties or responsibilities following from that stop.

REASONS FOR DENYING THE WRIT

The petitioner's claim, and properly formulated issues, support the decision below, and on review no conflict among the circuits is present which would support the granting of this writ.

1. In *Whren v. United States*, 116 S. Ct. 769 (1996), this Court addressed the reasonableness of traffic stops. In general traffic stops standing alone are not considered custodial in nature. The Court held that a traffic stop is reasonable, and there is no violation of the Fourth Amendment, if an officer has probable cause to believe that a traffic violation has occurred. In the petition it is admitted that Mr. Lucas was traveling at a high rate of speed, and there is no question that the stop here in question was reasonable.

2. In *Maryland v. Wilson*, 117 S. Ct. 882 (1997), this Court again addressed traffic stops, the issue primarily relating to the rights of passengers in the stopped vehicle. While noting that traffic stops may be dangerous to an officer, this Court held that during a traffic stop an officer may order passengers from the vehicle as well as the driver. In his dissent, Justice Kennedy noted that even routine traffic stops can take upwards of 30 minutes, and that a seizure of the passenger does not occur until the passenger is ordered from the vehicle. *Id.* at 890. In this case Trooper Sanders stop lasted less than 4 minutes, he allowed petitioners to leave without a citation, and ordered them to obey the law, which all citizens are required to do. The passenger was not ordered from the vehicle, and accordingly there was no seizure of Judith Lucas on which a duty may be imposed or a special relationship created.

3. In *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189, 109 S. Ct. 988, 103 L. Ed. 2d 249 (1988), this Court set forth the guidelines relating to a states duty to protect its citizens. The parameters provided were:

> . . . when a state takes a person into custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and well-being . . .

Id. at 199-200. The word custody has since been refined to mean some form of forced detention beyond that of a normal traffic stop. This language implies at the least that some form of illegal detention, application of force or custody must exist before any duty arises. In this case the less than 4 minute legal traffic stop involved no custody, created no special relationship nor any corresponding duty. Trooper Sanders did not create the severe heart condition which Mrs. Lucas suffered from for many years nor did he in the short traffic stop make it worse. He assessed the situation, determined that speeding with or without an escort would increase the danger, save little time in going to the nearby physicians office, and the best procedure to follow was to summon an ambulance, equipped with paramedics and equipment to treat a person with a heart condition. Trooper Sanders offered to summon an ambulance

on 6 occasions. The petitioners had a constitutional right to refuse Trooper Sanders offer of summoning an ambulance, and did so. *Washington v. Glucksberg*, 117 S. Ct. 2258 (1997). This Court has noted its reluctance to expand the concept of substantive due process, *Id.* at 2268, and on the facts of this case should make no expansion now. No present duty existed in this traffic stop situation, Trooper Sanders did not violate any policy as petitioners contend, and to impose a duty of providing medical care in traffic stop situations would impose impossible chaotic conditions with "no guideposts for responsible decisionmaking". *Id.* at 2268. Trooper Sanders conduct came no where close to the shock the conscience standard set forth in *Rochin v. California*, 342 U.S. 165, 72 S. Ct. 205, 96 L. Ed. 183 (1952), and at best could be perceived as some form of state tort.

4. In the detailed decision below the court took patience to methodically walk through the complaint. Cases of the Sixth Circuit, this Court, and other circuits were reviewed. One case involving a traffic stop, *Baldi v. City of Philadelphia*, 609 F. Supp. 162 (E.D. Pa. 1985) was cited by petitioner below. In *Baldi* an officer made a traffic stop, and then forced the citizen to wait 20 minutes for an ambulance, and the court there opined that this forced detention beyond the traffic stop may create some duty. In reviewing all cases the court below found no clearly established constitutional right requiring Trooper Sanders to do more than what he did in the routine traffic stop situation. All cases cited by petitioner, and those cited below, contain one element not present herein. The element is either custody or forcing the citizen to do something against their will not otherwise authorized by law. The petitioner seems to contend that the Sixth Circuit has changed their position since deciding this case by a citation to *Stemler v. City of Florence*, 28 SCR 20, October 28, 1997, p 6 (6th Circuit Slip Opinion Nos. 96-5593 and 96-5966). Contrary to petitioners contention the Stemler opinion supports the decision below. In *Stemler* the citizen was forced to get into a vehicle, actually physically placed in a vehicle, she did not wish to be in, and the court viewed that as a custody situation. The Sixth Circuit held that this added force (custody) beyond a normal traffic stop imposed a duty on the officers. The court also noted that they

did not opine as to the circumstances under which a substantive due process claim in a non-custodial setting might be possible.

5. In addressing the legal question of qualified immunity the court below followed the direction set forth by this Court in *Anderson v. Creighton*, 483 U.S. 640, 107 S. Ct. 3039, 97 L. Ed. 2d 531. Finding no clearly established right the court below granted immunity to all officers in their individual capacity. The official capacity claims, which arguably the entire claim was, were dismissed as mandated by *Will v. Michigan Department of State Police*, 491 U.S. 58, 109 S. Ct. 2304, 105 L. Ed. 2d 45 (1989). The pendant state tort claims were also dismissed, and are being pursued by petitioners in state court.

6. This is an emotional case, which by their very nature make bad law. It is indeed sad when any human being passes from this earth. The facts of this case do not support the use of 42 U.S.C. § 1983, and standing alone that statute creates no rights. This case does not involve reliance on an offer of assistance such as in *G-69 v. Degman*, 745 F. Supp. 254 (D.N.J. 1990); it is not a case where the officer cut off a source of rescue, *Estate of Sinthasomphone v. City of Milwaukee*, 785 F. Supp. 1343 (E.D. Wis. 1992); it is not a case where anyone was restrained from rescuing, *Horton v. Flemory*, 889 F.2d 454 (2d Cir. 1989); nor is it a case where anyone conspired or condoned any injury resulting from violence. *Freeman v. Ferguson*, 911 F.2d 52 (8th Cir. 1990). This case is a traffic stop case, without custody or constructive custody, where the citizen refused the assistance offered, and absent any of the foregoing there is no basis for a claim and this writ should be denied.

CONCLUSION

For the reasons given above, the petition should be denied.

Respectfully submitted,

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